

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ISMAEL PADILLA,

Plaintiff,

vs.

SECOND CIRCUIT COURT OF APPEALS,

*et. al.*,

Defendants.

Case No.: 2:23-cv-01511-GMN-BNW

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

Pending before the Court is the Order and Report and Recommendation (“R&R”), (ECF No. 49), from United States Magistrate Judge Brenda Weksler, which recommends dismissing Plaintiff’s Amended Complaint without prejudice and without leave to amend.

A party may file specific written objections to the findings and recommendations of a United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo* determination of those portions to which objections are made if the Magistrate Judge’s findings and recommendations concern matters that may not be finally determined by a magistrate judge. D. Nev. R. IB 3-2(b). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. R. IB 3-2(b).

On May 22, 2024, the Magistrate Judge screened Plaintiff’s Complaint and dismissed his claims but allowed leave to amend by June 22, 2024. (Order, ECF No. 34). When Plaintiff failed to file an amended complaint by that date, the Magistrate Judge recommended the case be dismissed without prejudice. (R&R, ECF No. 46). Two weeks later, however, Plaintiff filed a “Motion for Discrimination and Request for Relief,” (ECF No. 48), which the Magistrate Judge construed as an Amended Complaint and vacated the earlier R&R recommending

1 dismissal. The Magistrate Judge screened the Amended Complaint. (Order and R&R, ECF No.  
2 49). She determined that Plaintiff's constitutional claims were barred under *Heck v. Humphrey*,  
3 512 U.S. 477, 86–87 (1994), and advised that Plaintiff's claims should be brought pursuant to a  
4 writ of habeas corpus. (*Id.*). She further noted that Nevada is not the correct venue for  
5 Plaintiff's case, because the alleged constitutional violations did not take place in Nevada, nor  
6 are any Defendants residing in Nevada. (*Id.*) (citing 28 U.S.C. § 1391). As a result, she  
7 recommended that this case be dismissed without prejudice but without leave to amend.

8 Plaintiff timely filed an Objection, (ECF No. 50). His Objection contains similar  
9 complaints to those addressed by the Magistrate Judge and focuses on the alleged constitutional  
10 violations surrounding his conviction and trial, in addition to complaints about the prison  
11 system. Conducting a *de novo* review of the basis of the Magistrate Judge's Report and  
12 Recommendation, the Court accepts her findings and recommendations. Plaintiff has not  
13 demonstrated that Nevada is a proper venue for his case. The Court therefore ADOPTS the  
14 Report and Recommendation and dismisses the case without prejudice.

15 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 49), is  
16 **ACCEPTED and ADOPTED** in full.

17 **IT IS FURTHER ORDERED** that this case is **DISMISSED** without prejudice.

18 Dated this 20 day of September, 2024.

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23 Gloria M. Navarro, District Judge  
24 United States District Court  
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